

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 341 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA. and  
MR.JUSTICE A.R.DAVE

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?

-----  
NEW INDIA INDUSTRIES LTD

Versus

COMMISSIONER OF INCOME-TAX

-----  
Appearance:

MR KC PATEL for Petitioner  
MR MANISH R BHATT for Respondent No. 1

-----  
CORAM : MR.JUSTICE R.BALIA. and  
MR.JUSTICE A.R.DAVE

Date of decision: 28/04/99

ORAL JUDGEMENT

#. At the instance of the assessee the Income Tax Appellate Tribunal, Ahmedabad Branch B has referred questions said to be arising out of its appellate orders in Income Tax Application No. 1423 and 1424/Ahd/81 relevant to the assessment years 1975-76 and 1976-77.

#. Question No.1 reads as under:

"Whether on the facts and in the circumstances of the case, the Tribunal was justified in law in not allowing the claim of the appellant that the sur-tax liability is a allowance deduction on computing the business income?"

#. It is stated by learned counsel for the assessee that this Court has taken a view in CIT v. SLM Maneklal Industries Limited 205 ITR 547 that sur tax liability is not allowable as sur tax liability is allowable as deduction in computing the business income.

#. Following the aforesaid decision question No.1 is answered in affirmative that is to say in favour of the revenue and against the assessee.

#. Question No.2:

"Whether on facts in the circumstances of the case the Tribunal was justified in law in not granting relief under section 358 in respect of interest on export bill and bank charges for both the years under reference, as indicated in para 3 supra."

#. Learned counsel for the parties state that answer to this question as far as this court is concerned concluded by two decisions in Isabgul Export Corporation v. CIT 205 ITR 227 and Testeels Limited v. CIT 205 ITR 230 in favour of revenue. Following the aforesaid decision, Question No.2 is also answered in affirmative in favour of the revenue and against the assessee.

#. Question No. 3:

"Whether on the facts in the circumstances of the case the Tribunal was justified in law in following Special Bench's decision in the case Mattur Chemicals & Industries Corporation Limited and in holding that for considering the limit of disallowance laid down in Section 40C of the Act, the amount of commission paid was to be included?"

#. It is stated that answer to this question is also concluded against the assessee, in view of the decision of this court in CIT v. Rohit Mills 219 ITR 228. In view of the above, this question is also answered in

affirmative in favour of revenue and against the assessee.

#. Question No. 4 and 5 are interconnected and read as under:

"4. Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the rent income derived in respect of factory building No. 2 was chargeable under the head 'Income from house property' and that no depreciation was allowable in respect thereof under Section 32(1)(ii) of the Act?

5. If the answer to the above question is in the affirmative, whether the Tribunal was correct in law in invoking the provisions of section 32(1) read with Section 38(2) of the Act while holding that although the factory building was a business asset, no depreciation was allowable on the same in view of the character of its user?"

##. As the questions suggest the assessee was deriving rental income from letting out the premises which were used as rented premises by the lessee. It was claimed by the assessee, that since it is business premises rents should be treated as income from business and depreciation should be allowed from the house property. The claim of the assessee has been rejected by holding that the income derived by letting out the premises is chargeable only under income from house property and that being the case, the depreciation on such premises cannot be allowed. The conclusion of Tribunal in this case is justified in view of decision of this Court in assessee's own case reported in CIT v. New India Industries Limited 201 ITR 208.

Accordingly both these questions are answered in favour of the revenue and against the assessee.

##. Question NO. 6 reads as under:

"Whether on the facts and in the circumstances of the case, the Tribunal was justified in upholding the disallowance of Rs.17,429/- holding the same to be expenditure for entertainment?"

##. It has been pointed that this question pertains to disallowance of expenditure relating to assessment year 1975-76 that is to say prior to amendment in Section 37 which came into effect with effect from 1.4.76. The fact

of amendment by way of inserting Explanation has been considered by the Supreme Court in CIT vs. Patel Brothers reported in 215 ITR 165 and it was held that the Explanation does not operate retrospectively prior to 1.4.76, therefore, amended provision with reference to which the claim of the assessee has been disallowed is not applicable for the assessment year 1975-76. Following said decision, this question is to be answered in negative, that is in favour of assessee and against the revenue.

The reference accordingly stands disposed off.

There shall be no order as to costs.

(Rajesh Balia,J) (A.R. Dave, J)